

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
GREENVILLE DIVISION**

WALTER SKINNER

PLAINTIFF(S)

V.

NO. 4:05-cv-00024-GHD-EMB

SOPHIA ROACH

DEFENDANT(S)

**REPORT AND RECOMMENDATIONS**

An evidentiary hearing in this case was conducted on August 14 in Greenville. The only evidence offered by plaintiff was his testimony that defendant had sprayed him in the eyes with pepper spray while he was lying on his stomach with his hands cuffed behind his back. On cross examination plaintiff admitted that at the *Spears* hearing he testified he was sprayed with pepper while trying to get his hands in front. Plaintiff further testified that following this incident he was taken to the clinic for a ten minute examination during which his eyes were washed out. Plaintiff also testified that three months after the incident he made a request for reading glasses. That was the sum total of evidence to support plaintiff's claim that defendant had used excessive force in violation of the Eighth Amendment.

Defendant has moved for judgment as a matter of law pursuant to Fed.R.Civ.P. Rule 50 on the ground that at most plaintiff established a *de minimis* injury for which he is not entitled to recover damages under §1983. The undersigned Magistrate Judge agrees that plaintiff has utterly failed to establish that he sustained anything other than a minor injury and recommends that defendant's motion for judgment as a matter of law be granted and that all costs be taxed to plaintiff.

The parties are referred to 28 U.S.C. 636(b)(1) and Fed.R.Civ.P. 72(b) for the appropriate procedure in the event any party desires to file objections to these findings and recommendations. Objections are required to be in writing and must be filed within ten days of this date. Failure to file written objections to the proposed finding and recommendations contained in this report within ten days from the date of filing will bar an aggrieved party, except upon grounds of plain error, from challenging on appeal both the proposed factual findings and the proposed legal conclusions.

accepted by the district court *Douglass v. United Services Automobile Association*, 79 F.3d 1415 (5<sup>th</sup> Cir. 1996).

Respectfully submitted this, 14th day of August 2007.

/s/ E. M. Bogen

**UNITED STATES MAGISTRATE JUDGE**